IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.6726 OF 2005

Pratapsinha @ Sanjay Shankarrao Chavan .. Applicant

Versus

State of Maharashtra .. Respondent

Mr.S.R.Chitnis with Mr.Amol Patankar for applicant

Mr.S.R.Borulkar, P.P. with Mrs.S.D.Shinde, A.P.P. for respondent.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 17th November 2005.

P.C.

. This criminal application is for anticipatory bail and the prayer is that in the event of the applicant being arrested in connection with C.R.No.57 of 2000 registered with Khopoli Police Station, Dist. Raigad, he shall be enlarged on bail. This application is presented on 7th October 2005.

2. Along with this application, applicant has moved Application No.6792 of 2005. Applicant therein prays that this Court should exercise its powers under section 482 of Cr.P.C. and quash and set aside the order dated 4th October 2005 in Criminal Misc.Application No.566 of 2005 passed by the Additional Sessions Judge, Alibag.

3. This matter has a chequered history and it is not necessary to state the same, save and except that in connection with subject C.R. an application for anticipatory bail was moved by the applicant along with his father and mother.

It is alleged that applicant is guilty of offences punishable under section 498A and 306 of I.P.C. This was the position when criminal Misc.Application No.204 of 2000 was moved for anticipatory bail. Additional Sessions Judge, by his order dated 29th June 2000 (page 54) released the applicant on anticipatory bail on furnishing P.R.bond in the sum of Rs.10,000/- and one surety in the like amount and on condition that he shall report to Khopoli Police station from 6.30 p.m. to 8.30 p.m. till filing of charge sheet. He was also directed not to leave Khopoli without prior permission of the Court till filing of charge sheet.

4. It appears from the record that original complainant was not satisfied with the investigation as conducted and in his submission, applicants ought to have been charged with offence punishable under section 302 of I.P.C. In his submission, the investigating agency had

never probed the matter with this angle. Charging the investigating agency then in charge of investigation with serious lapses, he moved this Court and vide two orders this court directed that investigation be handed over to State C.I.D. An Order to that effect is passed on 3rd May 2002 and six months' time was given to complete investigation and take necessary action in accordance with law. This Court by directing that the investigation be transferred to C.I.D., quashed the conclusion of court below that the matter be closed and "A" summary Report be filed. Investigation was not left to the local police but was put in charge of the State C.I.D.

5. It is contended that when the investigation was handed over to C.I.D. and it commenced the probe, the present applicant was not cooperating with the same. On the other hand, applicant makes a serious grievance that when the conclusion recorded is that of "A"

summary and nothing was done further even after direction of this Court to complete the investigation, he was well within his rights to move around and seek employment opportunities outside this Country. In fact, my attention was invited to correspondence with the State C.I.D. and more particularly at page 66 of paper book, wherein in reply to a communication dated 24th May 2005, present applicant contended that till August 2004 neither the police nor the C.I.D. interrogated him. On the other hand, as per oral instructions of C.I.D. his written statement was already forwarded. There is neither any obstruction nor non cooperation with the investigation. Further, the applicant also is not responsible for delay. He has continued to reside in Khopoli for four years. In these circumstances, it cannot be said that the liberty granted by the Additional Sessions Judge vide order dated 29th June 2000 is misused in any manner.

6. Be that as it may, the State C.I.D. applied for cancellation of the anticipatory bail granted on 29th June 2000 and application in that behalf was registered as Criminal Misc.Application No.566 of 2005. Prayer therein was to cancel the anticipatory bail granted on 29th June 2000 after setting out the events of past five years.

7. It is contended by Mr.Chitnis, learned Senior Counsel appearing for applicant in support of present application for anticipatory bail that as and by way of abundant caution, an application also was moved by applicant for anticipatory bail which was numbered as Criminal Misc.Application No.604 of 2005 in the lower court. This course was advised in the event earlier bail is cancelled by the sessions court. In his submission, the learned sessions Judge fell in obvious error in only considering the application

for cancellation of anticipatory bail granted earlier but rejecting the present application without any adjudication on merits. He contends that no case was made out for cancellation of anticipatory bail and in these circumstances, the order cancelling the anticipatory bail passed earlier be set aside and this Court should consider the application made here being Criminal Application No.6792 of 2005 and pass appropriate orders in accordance with law.

8. Mr.Borulkar, learned P.P. on the other hand submits that now the investigation is in progress insofar as a serious offence under section 302 I.P.C. In his submission, the applicant can be charged with this serious offence. In these circumstances, the prosecution was justified in moving for cancellation of anticipatory bail and the learned Judge having applied well settled principles, this Court should not interfere in its jurisdiction under

section 482 of Cr.P.C. That apart, he contends that no case is made out for grant of anticipatory bail and the application made to this court be rejected. Once, the earlier anticipatory bail is cancelled, the Additional Sessions Judge was justified in rejecting the Criminal Misc.Application 604 of 2005.

9. In my view, instead of entering into the larger controversy, interest of justice would be served if an opportunity is granted to not only the applicant to make good his case for fresh anticipatory bail assuming that charge is of serious offence but to prosecution also to oppose the same. The sessions Judge relying upon his findings in Criminal Misc.Application No.566 of 2005 has rejected the application for anticipatory bail made vide Criminal Misc.Application No.604 of 2005.

10. In the application for anticipatory bail

before this Court, my attention is invited to the fact that offence is committed almost five years back and entire investigation is complete. There is no warrant for custodial interrogation. Averments to that effect are made in para 4(h) and (l). It would be in the fitness of things if the Additional Sessions Judge is directed to consider the prayer for anticipatory bail made by the applicant. The order that I propose to pass would meet ends of justice inasmuch as, from 10th October 2005 by an ad-interim order the applicant has been protected. Additionally Mr.Chitnis submits that the applicant would abide by the conditions imposed viz., to cooperate with the investigating agency and attend the police station as and when summoned. Further he submits that applicant is agreeable that his passport which is presently in the custody of C.I.D. be retained. Applicant has also agreed not to violate any conditions stipulated by section 437(2) of Cr.P.C. until the application for

anticipatory bail is considered in accordance with law.

11. All that Mr.Borulkar would urge is that it should be open to prosecution to point out that now the applicant having been charged with a more serious offence, the Court must not be influenced by the order passed on 29th June 2000.

12. In my view, the aforesaid suggestion of Mr.Borulkar is fair. His other contention is that because I am directing the Additional Sessions Judge to consider the application for anticipatory bail afresh, it would be construed as interfering with and setting aside the order cancelling earlier anticipatory bail. In the peculiar facts and circumstances of this case when the applicant himself has filed anticipatory bail application in sessions court and this Court, despite the submission that cancellation of his earlier anticipatory bail is bad in law,

this contention need not be decided. When the applicant is agreeable to the course of action proposed by me then the prosecution need not have any apprehension. The applicant is presently protected. The order of this court, which is operative till date is only qua interim protection. The issue of cancellation is therefore, wholly academic. The applicant's anticipatory bail application filed in 2005 is to be considered by the Court below. Therefore, question of cancellation of the bail granted earlier does not arise. Both sides can argue their respective cases. The applicant is not resting his case merely on the basis of investigation carried out in 2000 but also after the order passed by this Court. In other words, the order passed by me will protect the interest of both sides and leave open all contentions to be urged and considered in accordance with law.

13. In the light of the above, following

order:-

i) Criminal Misc.Application No.604 of 2005 of the applicant for grant of anticipatory bail is restored to file. The same shall now be considered afresh by the Sessions Judge;

ii) Applicant as well as respondent would be at liberty to place such materials as are permissible in law before sessions court and urge all contentions in support as well as to oppose the aforesaid application.

iii) Sessions Judge shall make an endeavour to dispose of this application within a period of four weeks from today. Interim protection granted by this Court inluding the conditions imposed therein shall continue for a period of four weeks

from today.

iv) Needless to state that if the application for anticipatory bail made by the applicant in 2005 is being considered and appropriate orders in accordance with law have to be passed thereon, the order cancelling anticipatory bail granted earlier would not in any manner influence the Sessions Judge and all pleas are open. In other words, the grounds set out in State's application for cancellation of the earlier bail can still be raised by it. Equally, the applicant can raise all pleas set out in the application filed in this court for anticipatory bail as also other submissions permissible in law.

v) In the light of the aforesaid Mr.Chitnis does not press for

anticipatory bail before this Court at this stage. Application disposed of.

(S.C.DHARMADHIKARI, J)